

REMARKS

The application has been amended and is believed to be in condition for allowance.

Amendments to the Disclosure

Claim 24 is amended to overcome the Official Action's objection, as detailed below.

Claim 22 is amended to address a typographical error.

Claims 23, 30, 32, and 33 are amended to address antecedent basis issues.

The amendments to the claims do not introduce new matter. The amendments are non-substantive and do not impact the scope of the claims.

New dependent claims 36-38 further distinguish the invention over the prior art. The new claims find support in the specification as originally filed (e.g., page 2, first paragraph; page 4, last paragraph spanning to page 5) and do not introduce new matter.

Formal Matters

The Official Action objected to claims 24 and 32 over the recitation of "the internal part", stating there is insufficient basis.

In reply, claim 24 is amended to recite "the end face of the dedicated part". The amendment does not introduce new matter, and is believed to overcome the Official Action's

objection. Withdrawal of the objection to the claims is thereby respectfully solicited.

Substantive Matters - Rejections under Section 103

The Official Action rejected claims 12, 19, 22-27, and 31-35 under 35 USC 103(a) as being unpatentable over Ambrose (4,852,177; "AMBROSE") in view of Levin (6,144,750; "LEVIN").

The Official Action rejected claims 17 and 29 under 35 USC 103(a) as being unpatentable over AMBROSE and LEVIN, and further in view of Juneau et al. (6,228,020; "JUNEAU").

The rejections are respectfully traversed for at least the reasons that follow.

As to independent claim 12, the Official Action concedes that AMBROSE fails to teach the standard part being made of rigid plastic, and further fails to teach that the standard part has a central aperture for a microphone located in the center of the outer end face.

It is further respectfully submitted that AMBROSE fails to teach a combination of a microphone aperture at the end face and a symmetric layout of the end face.

On the contrary, AMBROSE teaches only a microphone aperture in the embodiment shown in Figure 10, and Figure 10 does not show a symmetric layout of the end face.

The Official Action asserts that it would have been obvious at the time of invention for the skilled person to

combine the apparatus of AMBROSE with the apparatus of LEVINE, and that such a combination would fall within the scope of claim 12. The Official Action further asserts that one of skill would have been motivated to modify AMBROSE with LEVINE to allow for the sound picked up by the microphone to be more evenly distributed to the center of the hearing aid. Applicant respectfully disagrees.

The Official Action offers Figure 10 of AMBROSE as teaching standard part 11 with a microphone aperture 15. As disclosed in Figure 10, an end face has a microphone aperture 15 that is off-center, and at a center of the end face there is connected a vent tube 12. The off-center microphone aperture and the vent tube both make the end face asymmetrical.

The Official Action alleges that one of skill would have been motivated to modify the aforementioned arrangement with that of LEVINE "to allow for the sound picked up by the microphone to be more evenly distributed to the center of the hearing aid".

In response, it is respectfully submitted that no facts are provided in support of this motivation. An obviousness rejection may only be upheld where a reasonable explanation is identified why one of skill in the art would take the features taught by the secondary reference(s) and add those features to the primary reference. Here, no facts are

provided in any of the cited references or elsewhere on the record that would reasonably lead one of skill to believe that allowing for the sound picked up by the microphone to be evenly distributed to the center of the hearing aid, as proposed, a desirable objective. It is therefore respectfully submitted that the proposed combination is an improper application of hindsight.

Furthermore, even were the skilled person to combine AMBROSE with LEVINE as proposed, the resulting modification would still fail to teach or suggest each and every feature recited in claim 12. On the contrary, Figure 24 of LEVINE shows an end face with an irregular oval shape, with a microphone aperture 36 situated off from the center. Further, the volume control 32 and the battery compartment 34 break any symmetry of the end shape 30, resulting in an asymmetrical form contrary to the requirement of claim 12.

Hence, both AMBROSE and LEVINE only disclose asymmetrical end faces with a microphone aperture. Therefore, no combination of AMBROSE with LEVINE would lead to a symmetric end face as required by claim 12.

The Official Action states that a rearrangement of parts of an invention involves only routine skill in the art.

However, the Official Action does not indicate with specificity which parts of the invention would be rearranged.

Further, it is submitted that there is no incentive or motivation for rearranging any of the elements of AMBROSE and LEVINE to arrive at the apparatus recited in claim 12. The feature disclosed in the invention and the technical advantages of same are neither taught nor suggested in the cited references, and thus the arrangement of the claimed invention is novel and non-obvious.

Moreover, merely locating the microphone aperture of AMBROSE Figure 10 at a center of an end face would not lead to the device recited in claim 12. Were AMBROSE's microphone aperture modified to be placed at the center, as proposed by the Official Action, the vent tube would have to be connected somewhere else. The result cannot be symmetric, as required by claim 12.

The features recited in claim 12 provide the advantage that the same end face can be used for either of both ears without any cosmetic and acoustic differences (see, e.g., specification at page 1, bottom paragraph). This advantage is not obtained, nor is in any way suggested, by AMBROSE, LEVINE or any combination thereof.

Consequently, claim 12 is novel and non-obvious in view of the cited prior art.

It is also respectfully submitted that claims depending from claim 12 are patentable over the cited

references at least for depending from a patentable parent claim.

It is further respectfully submitted that independent claims 23 and 24, and claims depending therefrom including new dependent claims 36-38, are patentable at least for the reasons set forth above.

Reconsideration and withdrawal of the rejections under section 103 are respectfully requested.

From the foregoing, it will be apparent that applicant has fully responded to the January 28, 2009 Official Action and that the claims as presented are patentable. In view of this, applicant respectfully requests reconsideration of the claims, as presented, and their early passage to issue.

In order to expedite the prosecution of this case, it is requested that the Examiner telephone the attorney for applicant at the number set forth below if the Examiner is of the opinion that further discussion of this case would be helpful.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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